

² The record on appeal contains evidence received after OWCP issued its October 22, 2015 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

Appellant, a 66-year-old former supervisory field representative, was involved in a work-related motor vehicle accident on December 2, 1994. She has not returned to work since her accident.³ Appellant's accepted conditions include concussion, left wrist contusion, left thumb sprain, left elbow sprain, chest contusion, multiple lower limb contusions, multiple crushing injuries, bilateral knee blunt trauma, bilateral knee strain, right knee meniscus tear, left ankle strain, cervical, thoracic and lumbar strains, jaw subluxation, right shoulder tendinitis (consequential injury), and left ankle closed fracture of the lateral malleolus. She has been receiving FECA wage-loss compensation benefits since January 21, 1995.

Appellant was born in May 1949. When she turned 62 years of age in 2011, she was eligible to receive age-related social security retirement benefits. The record indicates that she was covered under the Federal Employees Retirement System (FERS) and was subject to Federal Insurance Contributions Act (FICA) withholding.⁴

By letter dated April 1, 2011, OWCP advised appellant of the possibility of a prohibited dual benefit as a result of receiving FECA wage-loss benefits and FERS-based social security retirement benefits. It explained that her FECA benefits would have to be reduced by the amount of any social security retirement benefits attributable to her federal service. OWCP further advised appellant to immediately contact her local district office if and when she was approved for social security retirement benefits. Approximately, two years later, appellant advised OWCP that she was receiving social security benefits. However, she believed that her benefits were based on her private sector employment.⁵

On June 6, 2014 OWCP contacted the Social Security Administration (SSA) inquiring about appellant's age-related SSA retirement benefits beginning on or after May 28, 2011. On July 31, 2014 an SSA representative, advised OWCP that appellant was eligible for SSA age-related retirement benefits beginning June 1, 2011.⁶ The representative provided a breakdown of appellant's monthly SSA benefits that included contributions from her federal service (w/ FERS), as well as a monthly benefit that excluded her FERS-based contributions (w/o FERS). Beginning June 2011, appellant's total monthly SSA benefit was \$841.10, and the corresponding monthly amount excluding her FERS-based contributions was \$720.20. The representative also provided additional calculations for subsequent periods beginning December 2011 (\$871.30/\$746.00), December 2012 (\$886.10/\$758.70), and December 2013 (\$899.40/\$770.00). Based on the information provided by SSA, appellant's FERS-based contributions accounted for

³ Appellant was separated from federal service effective October 1, 2001.

⁴ A January 20, 1996 notification of personnel action (Standard Form 50-B) identified appellant's retirement plan as "FERS & FICA," with a December 8, 1983 service computation date.

⁵ Appellant submitted a Form CA-1032 dated May 10, 2013, which acknowledged receipt of Social Security benefits. However, her previous year's Form CA-1032 (May 17, 2012) denied receipt of any Social Security benefits.

⁶ The SSA representative noted that appellant was entitled to disability prior to June 2011, and reentitled to disability as of May 2014.

approximately \$126.00 of her total monthly SSA benefits. At the time, OWCP did not take any action to offset her wage-loss compensation based on this information.

On May 28, 2015 OWCP submitted a “Re[-]computation” request to SSA regarding the possibility of a dual benefit.

On July 20, 2015 another SSA representative advised OWCP that appellant was eligible to receive age-related retirement benefits from June 2011 through April 2014. This representative indicated that she was entitled to SSA disability from October 2005 through May 2011 and from May 2014 through April 2015, and during those periods, a FERS offset did not apply. SSA further noted that appellant’s eligibility for SSA age-related retirement benefits resumed in May 2015 and provided calculations showing her total SSA monthly retirement benefits and corresponding monthly benefits excluding her FERS-based contributions. Although the latest full SSA monthly figures for June 2011 through December 2013 were consistent with information previously provided by SSA, the 2011-13 monthly figures excluding appellant’s FERS-based contributions differed. According to this representative, her monthly retirement benefits with/without FERS were as follows: June 2011 -- \$841.10/\$584.40; December 2011 -- \$871.30/\$605.30; December 2012 -- \$886.10/\$615.60; December 2013 -- \$899.40/\$624.80; and May 2015 -- \$1,385.60/\$942.40. Based on this latest data, the difference between appellant’s monthly SSA retirement benefits with/without FERS-based contributions ranged from \$256.70 in June 2011 to \$443.20 in May 2015.⁷

OWCP subsequently advised appellant that, effective July 26, 2015, her 28-day wage-loss benefits were offset based on the corresponding amount of SSA age-related retirement benefits attributable to her federal service. The new net compensation payment was to be \$1,358.51.

On August 18, 2015 OWCP issued a preliminary overpayment determination in the amount of \$10,636.63 for the period June 1, 2011 through July 25, 2015. It explained that the overpayment was a result of appellant having received FECA wage-loss compensation and FERS-based social security retirement benefits for the same period, which was prohibited. Additionally, OWCP advised that appellant was not at fault in creating the overpayment.

On August 28, 2015 appellant requested a decision based on the written record. She believed that SSA may have included some of her non-FERS, private income that she earned between 1991-94 when she worked for both the Federal Government and a nonfederal school system. Appellant also submitted an overpayment recovery questionnaire (OWCP-20) and supporting documentation regarding her monthly income and expenses. She reported total monthly income of \$2,638.51, which included both SSA and FECA benefits. Appellant’s reported monthly expenses also totaled \$2,638.51.⁸ Lastly, her reported assets, including cash, checking, and savings accounts totaled \$261.00.

⁷ OWCP did not request, nor has SSA provided, a complete payment history of the SSA age-related benefits appellant reportedly received beginning June 2011.

⁸ The monthly income and expenses matched exactly because appellant only reported \$0.32 per month for food.

By decision dated October 22, 2015, OWCP finalized its preliminary determination regarding the fact and amount of the overpayment, as well as its finding that appellant was not at fault. Regarding her request for waiver of recovery, it determined that her monthly income exceeded her monthly expenses by \$91.91, and the surplus was sufficient to warrant recovery of the overpayment.⁹ OWCP also imposed a 28-day repayment of \$75.00 to be deducted for appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.¹⁰ To avoid payment of a dual benefit, FECA wage-loss compensation benefits shall be reduced by the amount of Social Security Act benefits attributable to the employee's federal (FERS-based) service.¹¹ However, an offset is not required where the employee-beneficiary is covered under the Civil Service Retirement System and her SSA age-related benefits are attributable to private sector employment.¹²

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision with respect to the amount of the overpayment. The current record establishes that appellant was covered under FERS. The record also establishes that she received age-related social security retirement benefits. As appellant received a dual benefit, fact of overpayment is established.¹³

However, the portion of her monthly SSA benefits attributable to her FERS-based contributions is unclear. The current record includes two different sets of figures from SSA regarding appellant's FERS offset. The reason for this discrepancy is unclear from the record. It is also unclear why OWCP relied on the July 20, 2015 figures, which resulted in a significantly larger overpayment than would have been the case if it had utilized the July 31, 2014 figures. Because of the unexplained discrepancy, the Board is not in a position to determine whether OWCP's finding regarding the amount of overpayment (\$10,636.63) is accurate. Accordingly, the case shall be remanded to OWCP for further development regarding the appropriate FERS offset. On remand, OWCP should seek clarification from SSA regarding the conflicting FERS offset information provided. It should also obtain a complete payment history from SSA regarding the age-related benefits appellant reportedly received beginning in June 2011.¹⁴

⁹ OWCP adjusted appellant's income upward by converting her 28-day FECA benefits (\$1,358.51) to a monthly figure (\$1,471.72).

¹⁰ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

¹¹ *Id.* at § 8116(d)(2); *Id.* at § 10.421(d).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012); and *Dual Benefits*, Chapter 2.1000.4e(2) (January 1997).

¹³ *Supra* note 10.

¹⁴ In light of the disposition of issue 1, the Board finds issues 2 and 3 are premature.

After OWCP has developed the case record consistent with the Board's opinion regarding appropriate FERS offset, and any necessary further development, a *de novo* decision shall be issued.

CONCLUSION

The Board finds fact of overpayment, but that the case is not in posture for decision, regarding the amount of overpayment and other remaining issues.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2015 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside. The case is remanded for further action consistent with this decision.

Issued: June 21, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board